

STATE BOARD TO REVIEW CLAIMS

MEETING OF DECEMBER 1, 1993
Reno, Nevada

ITEM: V.A.

SUBJECT: Statement of Policy regarding overfill and spill coverage from the Petroleum Fund

DISCUSSION: In the past, requests have been made to cover cleanup costs where the contamination resulted from periodic spills or from overfills during the transfer of fuel during delivery. Staff has consistently denied recommending reimbursements for these requests based upon State and Federal regulations. Specifically:

NRS 590.900(1) requires that any person who proximately causes a discharge to occur in violation of State or Federal requirements to be liable for the costs in remediating his site. Federal requirements (40 CFR 280.30(a)) mandate that owners and operators ensure that releases due to spilling or overfilling do not occur. Federal regulations also require spill and overfill equipment to be installed by 1998.

Based upon the State and Federal requirements, a determination was requested from the State Board to Review Claims (the Board) at its September 2, 1992, meeting as to whether overfills and spills are tank discharges and covered by the Fund (a copy of the minutes from that portion of the meeting are attached).

At the meeting, a representative from the Washoe County District Health Department stated their opinion. It was their belief that the Federal Standard was not written to exclude overfills and spills from Fund coverage. The preamble to the Federal Register regarding this issue recognizes overfills and spills as one of the most common causes of releases from underground storage tank systems. The County representative requested the Board to consider reimbursing the cleanup costs associated with overfills and spills.

The Board discussed their belief that the existing funding mechanism was inadequate to cover cleanups from spills and overfills. The Board also discussed that several cleanup projects may not be completed if funding is denied for older tanks that did not have overfill and spill protection. However, after much discussion, a final determination was not made by the Board.

One item not discussed at the September 2, 1992 meeting of the Board was the use of private insurance to cover the cleanup associated with spills and overfills. While it is not known exactly how many petroleum marketers carry this form of insurance, it is safe to assume that most marketers carry private insurance for overfill and spill protection.

The proposed Resolution is intended to clarify the general consensus of the Board at its September 2, 1992 meeting regarding this issue. The proposed Resolution is drafted to deny Fund coverage for spills and overfills based upon three factors:

1. The requirements of NRS 590.900(1).
2. The requirements of 40 CFR 280.30(a).
3. The existence of private insurance to cover spills and overfills.

A consideration is given in the proposed resolution for spills and overfills that occurred and were not in violation of any State or Federal requirement at the time of occurrence. The impact of this consideration will be the need for future Board determinations on whether an owner/operator properly ensured that spills and overfills would not occur pursuant to 40 CFR 280.30(a).

RECOMMENDATION: **Adoption** of Resolution No. 93-002 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 93-002

Statement of Policy Regarding Overfill and Spill
Coverage from the Petroleum Fund

Whereas, the State Board to Review Claims (the Board) Finds:

1. Nevada Revised Statute 590.900(1) states:

"Any person who, through willful or wanton misconduct, through gross negligence or through violation of any applicable statute or regulation, including specifically any state or federal standard pertaining to the preparation or maintenance of sites for storage tanks, proximately causes a discharge, is liable to the division for any cost in cleaning up the discharge or paying for it to be cleaned up."

2. 40 CFR 280.30(a) states:

"Owners and operators must ensure that releases due to spilling and overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling."

3. The issue of Petroleum Fund coverage for corrective action costs resulting from overfills and spills was deliberated at the September 2, 1992 meeting of the Board. Although a formal motion was not adopted by the Board, the general consensus at the meeting was to deny claims for overfills and spills.

THEREFORE BE IT RESOLVED:

The corrective action costs for contaminations resulting from spills and overfills that occur in violation of State and Federal requirements will not be eligible for reimbursement from the Petroleum Fund.

John Haycock, Chairman
State Board to Review Claims